



November 25, 2014

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Sabrina Burroughs  
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U.S. Customs and Border Protection  
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AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

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OFFICERS AND DIRECTORS  
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PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

ROBERT REMAR  
TREASURER

Re: Freedom of Information Act (FOIA) Request  
Juvenile Referral Program

Dear Ms. Burroughs:

The American Civil Liberties Union Foundation ("ACLU") and Women's Refugee Commission ("WRC") ("Requestors") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**Request for Information**

The Requestors request disclosure of the following records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by U.S. Customs and Border Protection ("CBP"), including but not limited to records prepared, received, transmitted, collected and/or maintained at CBP Headquarters and at Border Patrol Sector Headquarters, Stations, and Substations:

<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

All records relating to the Juvenile Referral Program (“JRP”).

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by CBP or any of its components as the “Juvenile Referral Program” or the “Mexican Juvenile Referral Program”;
- Any program or policy implemented in 2014 relating to children<sup>2</sup> suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

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This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93), or other records in CBP’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children’s names or other personally identifying information, and you may redact such information from the records provided to us.)

### **Request for Expedited Processing**

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

First-hand reports from children and their attorneys, along with statements of

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<sup>2</sup> The term “children” as used herein includes all individuals under 18 years old.

federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,300 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 4,000 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have not revealed any information about the JRP, and we have been able to locate only one short article, published in Spanish, that references the program.<sup>3</sup> This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications

<sup>3</sup> [www.reforma.com/aplicaciones/articulo/default.aspx?id=348413](http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413).

department, its 53 state-based affiliates, and its public website, [www.aclu.org](http://www.aclu.org). Among other civil liberties and civil rights issues, the ACLU's website addresses immigrants' rights issues in depth (at [www.aclu.org/immigrants](http://www.aclu.org/immigrants)), provides features on immigrants' rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog; releases information via social media platforms; and has produced a television series on civil liberties issues.<sup>4</sup>

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

### **Request for Waiver of Fees**

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and

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<sup>4</sup> The ACLU and WRC are also "representative[s] of the news media" within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience"); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public").

governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public's understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, "a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use." 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors' dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.<sup>5</sup>

In any event, the Requestors are "representative[s] of the news media" and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be "limited to reasonable standard charges for document duplication" alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

\* \* \*

We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information

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<sup>5</sup> The following are recent examples of requests in which agencies did not charge the ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

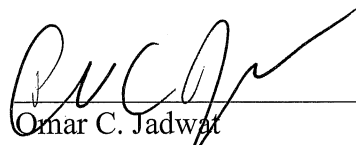
or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to [ojadwat@aclu.org](mailto:ojadwat@aclu.org) or at the address below. Thank you for your prompt attention to this request.

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Sincerely,



Omar C. Jadwat  
ACLU Immigrants' Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004



Jennifer Podkul  
Migrant Rights and Justice Program  
Women's Refugee Commission  
1730 M St, NW  
Washington, D.C. 20036

EXHIBIT A  
*List of A-Numbers*

A 202-000-415	A 206-795-502
A 202-001-394	A 206-796-342
A 202-030-878	A 206-796-454
A 202-030-948	A 206-797-056
A 205-517-292	A 206-797-057
A 205-517-378	A 206-798-972
A 205-517-463	A 206-799-663
A 205-641-950	A 206-799-990
A 205-642-071	A 206-800-296
A 205-645-799	A 206-800-448
A 205-726-738	A 206-800-630
A 205-732-315	A 206-802-293
A 205-841-497	A 206-802-293
A 205-841-567	A 206-802-407
A 205-841-676	A 206-802-509
A 206-159-844	A 206-802-815
A 206-316-246	A 206-803-003
A 206-360-464	A 206-804-727
A 206-693-644	A 206-805-186
A 206-726-950	A 206-805-197
A 206-727-574	A 206-805-198
A 206-756-278	A 206-805-200
A 206-756-450	A 206-807-259
A 206-756-451	A 206-807-529
A 206-769-689	A 206-807-546
A 206-769-691	A 206-807-554
A 206-769-974	A 206-807-622
A 206-770-122	A 206-807-687
A 206-770-123	A 206-807-744
A 206-770-294	A 206-807-771
A 206-770-294	A 206-807-773
A 206-770-296	A 206-843-157
A 206-771-905	A 206-843-682
A 206-772-155	A 206-843-682
A 206-772-617	A 206-846-866
A 206-772-617	A 206-870-519
A 206-775-149	
A 206-779-155	
A 206-779-401	
A 206-779-995	
A 206-780-173	
A 206-794-795	
A 206-795-501	